Before the
Federal Communications Commission
Washington, DC 20554

In the matter of:	)	
	)	
Petition for Rulemaking to Amend	)	
The Commission's Rules to Promote	)	RM-11752
Expanded Free Access to Local	)	
Broadcast Television Stations Via	)	
Over-the-Air Reception, Internet	)	
Streaming, or Other Means	)	

OPPOSITION OF LOCAL BROADCASTERS' COALITION

Gray Television Group, Inc.
Media General, Inc.
Meredith Corporation
Raycom Media, Inc.

August 14, 2015

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SUMMARY

Over the last ten years, retransmission consent revenue has grown from a negligible line item on a broadcaster's income statement to a critical revenue stream that allows local broadcasters to fund the increasing cost of programming. Revenue from retransmission agreements allow broadcasters to compete with national cable networks when bidding for marquee programming. Before retransmission consent was a significant revenue stream, premier sporting events like *Monday Night Football* and the *College Football Bowl Championship Series* were migrating slowly from free, over-the-air broadcast television stations to pay TV cable networks. The cable networks, which could tap into a dual revenue stream of hefty affiliate licensing fees and advertising, were able to outbid broadcast networks for these expensive programming rights. In recent years, however, broadcasters have developed a second revenue stream from retransmission consent fees. As a result, the migration of marque programming away from broadcast has stopped and the trend has reversed itself.

Keeping live sports and other big-budget programming on local broadcast stations serves the public interest. First, it is available to anyone with an antenna for free. Second, the retransmission fees that broadcasters charge for this premier programming are <u>lower</u> than the fees national cable networks charge for comparable (but lower rated) programming.

Broadcasters charge lower licensing fees than cable networks because broadcasters earn more advertising revenue than cable networks. The higher advertising revenue subsidizes the cost of programming and allows local broadcast stations to charge lower retransmission fees than a cable network otherwise would charge for the same programming.

As proof, the Commission only needs to review the per-subscriber fees charged by cable networks like ESPN, TNT, or the NFL Network and compare those fees to the retransmission fees charged by local broadcast stations. Those cable networks offer a handful of premier

sporting events in a year surrounded by schedule chocked full of low-rated programming. Meanwhile, each week broadcast stations deliver top sporting events; the most watched primetime and daytime programming; local news programming that has more viewers than FOX News, CNN, and MSNBC combined; and popular syndicated fare. The value gap is undeniable.

Cable networks must charge higher licensing fees for their lower-rated programming because they cannot make up the difference with advertising. Most cable networks are available in 20 million fewer homes than broadcast stations, and even the highest rated programs on cable garner fewer viewers than if the same program were available on broadcast. As a result, advertising revenue for cable networks is lower, which puts broadcasters in the best position to deliver high-cost programming at the lowest price to the most viewers.

Instead of adopting proposals that would handicap broadcasters as they negotiate for retransmission consent, the Commission should be encouraging more live sports and other top programming to remain on broadcast television. If live sports like the NFL moved away from the broadcast networks to cable, the licensing fees that networks like ESPN, Fox Sports 1, and TNT would charge would be astronomical. Those fees naturally would be passed on to consumers. The best way to ensure that expensive programming remains on broadcast – where it will be sold to MVPDs at a lower price – is to ensure that the Commission's rules are not biased against broadcasters as compared to their national cable network competitors.

The Commission, accordingly, should reject Mediacom's latest proposal to gut broadcaster's retransmission consent rights. It violates the Communications Act of 1934, as amended, and ultimately, it would lead to higher programming fees to MVPDs because marque programming would migrate away from local broadcast stations to national cable networks that would not be hampered by similar regulations when negotiating licensing agreements.

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OPPOSITION OF LOCAL BROADCASTERS' COALITION

Gray Television Group, Inc.; Media General, Inc.; Meredith Corporation; and Raycom Media, Inc. (the "Local Broadcasters") hereby submit these comments opposing the latest attempt by Mediacom Communications Corporation ("Mediacom") to dismantle the retransmission consent system established by Congress.[1] Mediacom's Petition rests on faulty assumptions, ignores key regulatory roadblocks, and displays a fundamental misunderstanding of the retransmission consent marketplace. Ultimately, Mediacom's proposals are a transparent attempt to tilt the balance in retransmission consent negotiations, so Mediacom and its MVPD allies once again can enjoy the monopoly profits they reaped two decades ago. Mediacom's proposals (1) would violate the Communications Act of 1934, as amended, and (2) would have ripple effects that, perversely, would lead to higher programming fees and higher bills to consumers. The Local Broadcasters urge the Commission to reject Mediacom's misguided Petition.

[1] Mediacom Communications Corporation, *Petition for Rulemaking*, RM-11752 (filed July 7, 2015).

I. ADOPTING THE RULES PROPOSED IN MEDIACOM'S PETITION WOULD VIOLATE THE COMMUNICATIONS ACT.

As other commenters in this proceeding, including the National Association of Broadcasters ("NAB"), have convincingly shown, Mediacom's proposal to impose a license renewal condition tying a broadcaster's retransmission consent rights to its over-the-air coverage is inconsistent with Section 325(b) of the Communications Act.[2] The Local Broadcasters need not repeat those arguments here.

Similarly, as NAB and others have stated, the failure of some broadcasters to reach an arbitrary level of over-the-air coverage that Mediacom deems adequate is not because broadcasters "have no incentive to do so."[3] Rather, it is the result of Commission-imposed freezes and other policies adopted in anticipation of the Incentive Auction.[4] Prior to those freezes, the Local Broadcasters and others had been investing millions of dollars building out, upgrading, and expanding their digital facilities. These investments were made in the teeth of the worst economic recession in seventy-five years and the worst advertising environment in history. As the economy improved, those investments naturally would have continued, but the freezes and other rules adopted in anticipation of the Incentive Auction necessarily forced broadcasters to defer any further investment in expanding their over-the-air coverage. Of course, it would be fundamentally unfair for the Commission to penalize broadcasters for failing to provide some arbitrary level of coverage when the Commission's own rules prevented broadcasters from reaching those over-the-air coverage requirements.

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2 Opposition of the National Association of Broadcasters in RM-11752 (filed Aug 14, 2015) at 6-7.

3 Petition at 3.

4 *See, e.g.*, *Media Bureau Announces Limitations on the Filing and Processing of Full Power and Class A Television Station Modification Applications, Effective Immediately, and Reminds Stations of Spectrum Act Preservation Mandate*, 28 FCC Rcd 4364 (2013); *See also* NAB Opposition at 4.

Mediacom's proposal that broadcasters can "fill in the gaps" with streaming is also flawed. First, the Local Broadcasters have no control over the availability of high-speed broadband necessary for streaming a high definition broadcast signal. Second, as Mediacom knows full well, clearing the underlying copyrights and other intellectual property within a broadcast signal for Internet distribution is extremely complicated and requires approval from hundreds of copyright owners, including sports leagues, networks, syndicators, and news organizations. Again, Mediacom's proposal would penalize broadcasters for failing to provide a service that is plainly outside of their control.

Finally, Mediacom's criticism of broadcasters who are investing in bringing multicast programming to their communities makes no sense.[5] The Local Broadcasters collectively offer several hundred multicast channels. Given Mediacom's apparent concern for the plight of free, over-the-air television, the Local Broadcasters would have expected Mediacom to praise this investment in equipment and programming that makes it possible to bring new sources of free, over-the-air television to local viewers.

In any event, if Mediacom truly is concerned about enhancing over-the-air broadcast coverage, the Local Broadcaster's look forward to seeing Mediacom's comments supporting the prompt adoption of ATSC 3.0 and opposing the Notice of Proposed Rulemaking that would reserve a vacant channel in the broadcast band for unlicensed use.[6] Of course, the Local Broadcasters suspect that Mediacom will remain silent on those issues because Mediacom's true

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5 Petition at 3 (complaining that broadcasters have focused their spending on "multiplexing their signals, not extending the public's free access to those signals").

6 *See Amendment of Parts 15, 73 and 74 of the Commission's Rules to Provide for the Preservation of One Vacant Channel in the UHF Television Band for Use by White Space Devices and Wireless Microphones*, 30 FCC Rcd 6711 (2015).

motive is to drive a stake through the heart of broadcaster's retransmission consent rights guaranteed by Section 325(b) of the Communications Act.

II. ANY CHANGE TO THE RETRANSMISSION CONSENT RULES THAT SHACKLE LOCAL BROADCASTERS WOULD CAUSE MORE PROGRAMMING TO MIGRATE TO CABLE NETWORKS AND WOULD LEAD TO HIGHER TOTAL PROGRAMMING FEES PAID BY MVPDS.

If successful, the crusade by Mediacom and its MVPD allies against retransmission consent would cause top quality programming to migrate from free, over-the-air broadcast television to cable networks. This migration would result in higher programming fees from those cable networks, which would mean more misleading surcharges by MVPDs and higher bills to consumers. The fact is that high-quality sports, entertainment, and news programming is expensive to produce, and programming costs – especially for live sports – are increasing.[7] Over the coming decades, premier programming will migrate to whatever platform is able to pay for it (local broadcast, cable network, over-the-top, or elsewhere). Without retransmission consent revenue, broadcasters would be at a distinct disadvantage when bidding for programming against national cable networks funded by hefty affiliate licensing fees.

From a pure public interest standpoint, the question should be which platform can deliver this programming to the most viewers at the lowest cost. Both broadcasters and cable networks earn revenue from a mix of advertising and retransmission consent/affiliate licensing fees. Naturally, high advertising revenue makes a distributor less reliant on charging licensing fees to MVPDs. Conversely, if a distributor earns less advertising revenue, it will need to increase its licensing fees to make up the difference. In other words, advertising revenue can subsidize the

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[7] Cecilia Kang, *Bidding War Between Networks, Sports Leagues Will Increase Price of Cable TV*, WASH. POST (Jan. 23, 2015) at http://www.washingtonpost.com/business/economy/bidding-war-between-networks-sports-leagues-will-increase-price-of-cable-tv/2015/01/23/d0cb19f4-9db8-11e4-a7ee-526210d665b4_story.html

high cost of programming. The Commission, accordingly, should ensure that its rules are not biased against the platform that earns the most advertising revenue.

A. Local Broadcasters Have Substantially Higher Ratings than Cable Networks and, Thus, Earn More Advertising Revenue.

When it comes to amassing large audiences and earning advertising revenue, the power of local broadcast stations is unmatched. Ratings for broadcast stations dominate their cable network competitors. The average ratings for each of the top four broadcast networks (ABC, NBC, CBS, and FOX) are at least three times the ratings for the top rated cable networks.[8] In the 2014-2015 television season, 47 of the 50 highest rated television series were on local broadcast television stations.[9] Only AMC's *The Walking Dead* (ranked #4), ESPN's *Monday Night Football* (ranked #18) and HBO's *Game of Thrones* (ranked #48) cracked the top 50.

The disparity in ratings between local broadcast stations and cable networks even holds true when a substantially identical program appears on a broadcast station and a cable network. For example, ESPN's ESPY awards show traditionally has aired on cable, but in 2015 ESPN moved the ESPYs to ABC Network. It was a smashing success. Ratings for the 2015 ESPYs skyrocketed 253% above the 2014 broadcast, which aired on ESPN and ESPN2.[10] In 2014, the NFL Network and CBS split the Thursday Night Football Package. The ratings for weeks two through eight when the games appeared on CBS were more than double the ratings for weeks nine through seventeen when the games were available exclusively on the NFL Network.[11] This disparity held true even in the local market of the NFL teams playing on Thursday night where

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[8] Robin Flynn, SNL Kagan, *Putting Retrans Fees in Perspective Following FCC's Recent Retrans Ruling* (Apr. 14, 2014).

[9] TV Insider, *These are the 50 Most-Watched TV Shows of the 2014-15 Season*, at http://www.tvinsider.com/article/1989/top-50-tv-shows-2014-2015-highest-rated-winners-and-losers/

[10] Medialife Magazine, *Move to Broadcast Lifts ESPYs to Record*, at http://www.medialifemagazine.com/move-to-broadcast-lifts-espys-to-record/

[11] TVB, *2014 Thursday Night Football on CBS*, at http://www.tvb.org/research/2053636/NFL2014

ratings were 30% higher when the game aired on CBS compared to a game on the NFL Network.[12] A few more examples are below:

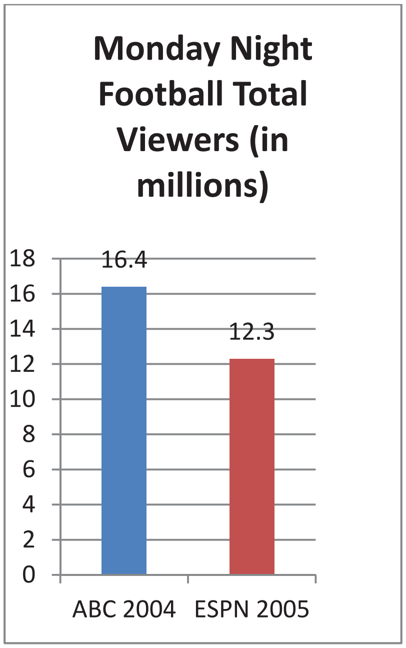

Figure 1: *See* Leonard Shapiro and Mark Maske, *Monday Night Football Changes the Channel*, WASH. POST (Apr. 19, 2005), *available at* http://www.washingtonpost.com/wp-dyn/articles/A63538-2005Apr18.html; Sara Bibel, *ESPN's Monday Night Football: Cable's Most-Watched Series for Eighth Straight Year*, TV by the Numbers (Dec. 26, 2013) *available at* http://tvbythenumbers.zap2it.com/2013/12/26/espns-monday-night-football-cables-most-watched-series-for-eighth-straight-year/224949/.

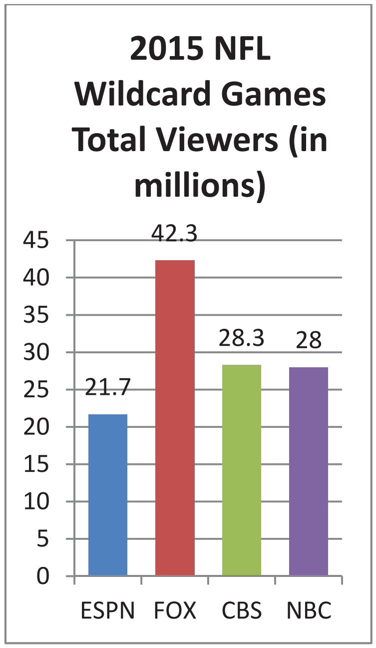

Figure 2: *See* Sara Bibel, *NFL Wild Card Weekend Averages Nearly 30 Million Viewers*, TV by the Numbers (Jan. 5, 2015) *available at* http://tvbythenumbers.zap2it.com/2015/01/05/nfl-wild-card-weekend-averages-nearly-30-million-viewers/346358/.

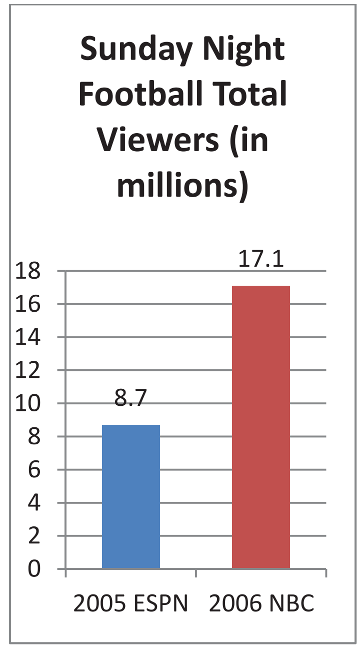

Figure 3: *See* Robert Seidman, *Sunday Night Football: Best Average Viewership in 14 Years*, TV by the Numbers (Oct. 5, 2010) *available at* http://tvbythenumbers.zap2it.com/2010/10/05/sunday-night-football-best-average-viewership-in-14-years/66688/; Business of Sports, Scott R. Rosner & Kenneth L. Shropshire 2d ed., p 278.

With cable networks like ESPN having lost more than seven million homes in just four years, the disparity between broadcast audiences and cable network audiences will only continue to grow.[13] Indeed, ABC is now available in nearly 24 million more homes than ESPN making it

12 TVB, NFL 2014 A Local Success, at http://www.tvb.org/media/file/TVB_Analysis_NFL_2014_A_Local_Success.pptx

13 *ESPN Losing Pace with Broadcast Rivals*, Sports Media Watch (July 26, 2015), *at* http://www.sportsmediawatch.com/2015/07/espn-fewer-cable-subscribers-losing-pace-with-broadcast-rivals/

highly unlikely that ratings for an event on ESPN could match the ratings (and accompanying advertising revenue) for the same event airing on ABC or any other broadcast network.[14]

Because ratings for cable networks are substantially lower than ratings for broadcast stations, cable networks earn less advertising revenue, and they are more dependent on affiliate fees charged to MVPDs. In fact, affiliate fees represent more than 40% of the revenue for most major cable operators, and, for the sports-focused networks, the percentage is even higher.[15] By contrast, less than 20% of broadcast revenue comes from retransmission consent fees.[16] In 2014, advertising accounted for approximately 80% of all broadcast revenue.

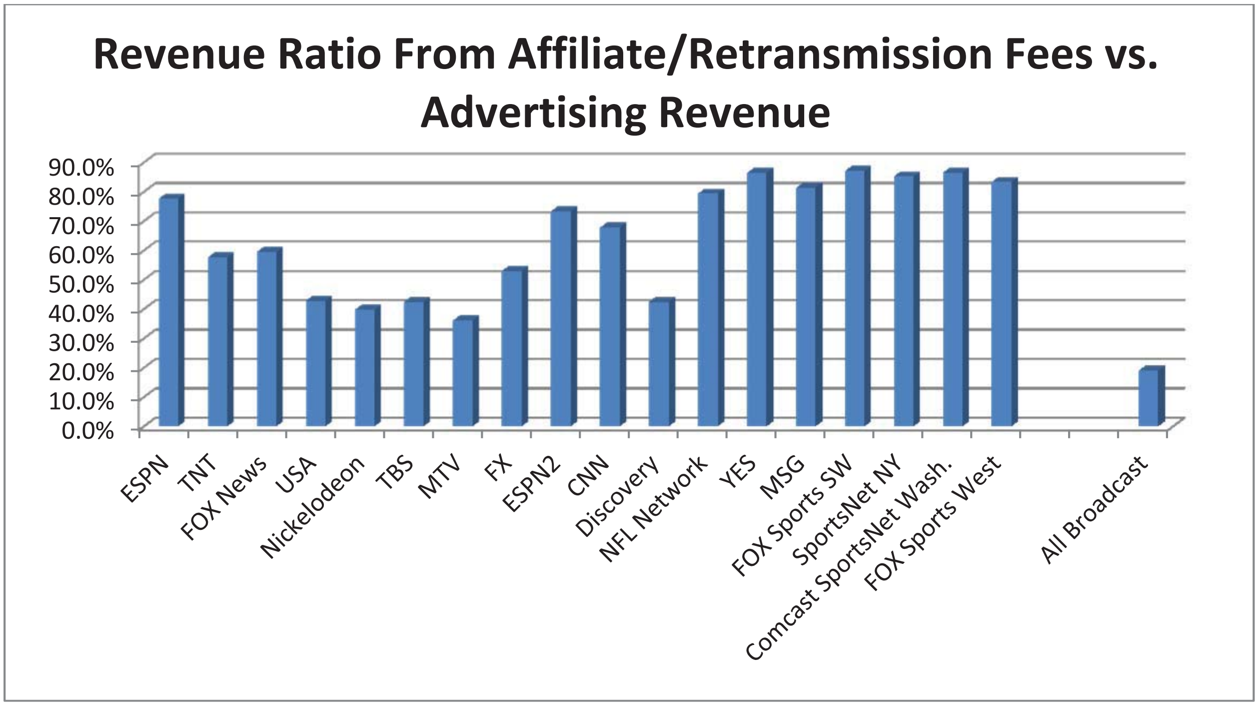

Figure 4: Source: Barclay's Capital, Inc. estimates for 2012 revenue from advertising and affiliate fees from top cable networks. *See* Note 15.

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14 Id.

15 *See* Barclays Capital, Inc., Internet and Media 101 (May 2013) at 40, 50. All revenue estimates from Barclays and SNL Kagan include only advertising revenue and affiliate fee or retransmission consent fee revenue and do not include revenue from other ancillary sources.

16 In 2014, SNL Kagan estimates broadcasters earned $4,858,000 in retransmission revenue compared to $20,656,000 in advertising revenue. In 2015 and 2016, SNL Kagan predicts that the ratio between retransmission revenue and ad revenue will increase to 25%/75%, but even at that level the ratio remains well below ratio for cable networks. *See* Economics of Broadcast TV Retransmission Revenue, SNL Kagan (2015).

Because affiliate fees represent a much higher percentage of the revenue mix for cable networks than for broadcast stations, it necessarily means that when cable networks and broadcasters bid for new programming, cable networks will rely on affiliate fees to pay their programming expenses to a much greater extent than broadcasters. Those higher fees are passed on to consumers. Meanwhile, broadcasters will use advertising revenue to subsidize more of their programming costs leading to lower fees to MVPDs.

B. Higher Advertising Revenue Allows Broadcasters to Charge Lower Fees than Cable Networks Do for the Same Programming.

To be sure, retransmission consent fees have increased over the last several years and are becoming a more important piece of the revenue mix for local broadcast stations. Indeed, the American Cable Association, the American Television Alliance, and various MVPDs have loudly complained that local broadcast stations will earn approximately $6.3 billion in retransmission consent revenue in 2015.[17] Neither the MVPDs nor their lobbying organizations, however, put this number into proper context. Breaking down the ACA's and ATVA's $6.3 billion figure yields an average "Big Four" retransmission consent fee of $1.11 per subscriber per month.[18] When this figure is compared to the monthly, per-subscriber fee charged by much lower rated cable networks, it proves the Local Broadcaster's point: local broadcast stations charge lower fees for top-quality, must-have programming than cable networks. These lower fees are possible because of the larger audiences and outsized advertising revenue that local broadcasters deliver.

[17] American Cable Association, *Ex Parte Communication* in MB Docket 10-71 (July 31, 2015) at 1 n.2; American Television Alliance, *Ex Parte Presentation* in MB Docket No. 10-71 (July 22, 2015) at 1-2.

[18] SNL Kagan divided $6.3 billion by 101 million MVPD subscribers and then by 4.7 to determine the approximate fee earned by each "Big Four" affiliate. The extra 0.7 accounts for non-Big Four stations that also earn retransmission fees in many markets. The resulting figure is divided by 12 to calculate the monthly per-subscriber fee. *See* Economics of Broadcast TV Retransmission Revenue, SNL Kagan (2015).

Network	Monthly Per-Subscriber Licensing/Retransmission Fees in 2015[19]	Average Prime Time Total Viewers (Live + SD) July 6-August 2, 2015 (000's)[20]
ESPN	$6.61	903
TNT	$1.65	1,592
Disney Channel	$1.34	1,785
NFL Network	$1.31	**[21]
FOX News Channel	$1.25	1,668
Average "Big Four" Affiliate	***$1.11***	***4,131***
USA Network	$1.00	1,572
FOX Sports 1	$0.99	**
TBS	$0.85	1,356
ESPN2	$0.83	**
Nickelodeon/Nick at Nite	$0.73	723
SEC Network	$0.66	**
CNN	$0.64	**
FX Network	$0.62	1,074
MTV	$0.50	**
AMC	$0.42	859
Discovery Channel	$0.42	1,658
Big Ten Network	$0.40	**
Golf Channel	$0.35	**
A&E	$0.31	862
The Weather Channel	$0.14	**

The fees charged by these low rated cable networks put the retransmission fees charged by broadcasters into proper perspective. If eight exclusive regular season NFL games on the NFL Network are worth $1.31 per subscriber, MVPDs should have no complaints about the fees charged by CBS, FOX, and NBC affiliates, which offer more than double the number of regular season games, plus NFL Playoff games, plus the Super Bowl in rotating years. Similarly, if the

[19] SNL Kagan, *Basic Cable – Affiliate Revenue Per Avg Sub/Month* (2015); *see also* Clay Travis, ESPN Sues Verizon over Cable Offerings *at* http://www.foxsports.com/college-football/outkick-the-coverage/espn-sues-verizon-over-cable-offerings-042715.

[20] TV by the Numbers, Network vs. Network, *at* http://tvbythenumbers.zap2it.com/category/network-vs-network/.

[21] Networks denoted with ** did not finish among the top-25 rated cable networks during any of the four weeks between July 6, 2015 and August 2, 2015.

SEC Network can charge $0.66 and the Big Ten Network can charge $0.40 for a mix of second- and third-tier college football and basketball games, the premier college football games on CBS, ABC, FOX, and NBC should be worth at least that same amount (if not more) – on top of the value for the NFL programming. Of course, local broadcast stations offer more than just the most high-profile sporting events. Local broadcast stations also offer top-rated and critically acclaimed prime-time dramas. FX charges $0.62 per subscriber for its much lower-rated dramas. News and weather also is a key component of broadcast programming, and more viewers tune to broadcast stations for news than all of the national cable networks combined, including FOX News ($1.25), CNN ($0.64), and the Weather Channel ($0.14).[22] Adding it all up – and even accounting for the commercial avails that some cable networks offer to MVPDs – the total package of sports, news, drama, general entertainment, and weather programming provided by local broadcast stations is worth far more than what broadcasters charge in retransmission fees.[23]

C. Any Change to the Retransmission Consent Rules that Handicaps Local Broadcasters Will Cause High-Priced Sports Programming to Migrate to Cable Networks, Which Will Charge Even Higher Affiliation Fees Than Broadcasters Would.

If enacted, the proposals in Mediacom's Petition would hamstring broadcasters as they negotiate retransmission consent agreements with MVPDs. Broadcasters would have less freedom to negotiate for the appropriate market-based value for their programming. Notably, Mediacom's proposals would not touch the cable networks. Cable networks would remain

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[22] In 2014, the median total-day viewership for FOX News, CNN, and MSNBC combined was a paltry 1.798 million people. By comparison, the late news and early evening newscasts on local broadcast stations averaged almost 25 million viewers each and the local morning news averaged almost 12 million viewers. Similarly, the total combined average viewership for the network evening newscasts on NBC, ABC, and CBS was 23.7 million and the combined average viewership for the Sunday morning talk shows on NBC, ABC, CBS and Fox was 9.8 million. *See* Pew Research Center, State of the News Media 2015, *available at* http://www.journalism.org/files/2015/04/FINAL-STATE-OF-THE-NEWS-MEDIA1.pdf.

[23] The Local Broadcasters recognize that many cable networks offer local advertising avails to help offset their high licensing fees. But, advertising avails in low-rated programming does not eliminate the enormous value gap between broadcast programming and cable networks.

unburdened by any restrictions when negotiating their affiliate fees. This regulatory imbalance would place broadcasters at a significant disadvantage to their cable network competitors when negotiating for their fair share of programming fees. Over time, this regulatory imbalance would limit the ability of broadcasters to pay for premier programming and cause high-profile programming to migrate from broadcasters to the unregulated cable networks. Affiliate fees would rise as cable networks seek to pay for their new programming, and because cable networks (1) are available in 20 million fewer homes, (2) have smaller average audiences, and (3) earn less advertising revenue than broadcasters, affiliate fees would need to rise higher than the retransmission fees that broadcasters would have charged for the same exact programming.

Before Mediacom and its MVPD allies call for a fundamental re-shaping of the retransmission consent system, they should ask themselves what networks like FOX Sports 1 would charge if they suddenly had the Sunday afternoon package of NFL games; what TBS and TNT would charge if they had the entire NCAA Tournament and World Series; or what the SEC Network would charge if it offered the SEC football game of the week currently on CBS. If live sports were to migrate from broadcast to cable networks, the licensing fees from those cable networks would skyrocket, and those increases would be passed on to consumers. On the other hand, keeping popular programming on broadcast stations will minimize the total fees charged to MVPDs and will ensure that popular programming remains available for free with an over-the-air antenna.

CONCLUSION

The Commission should reject Mediacom's latest call to dismantle broadcasters' retransmission consent rights. Mediacom's proposals violate the Communications Act and would unduly shackle broadcasters as they negotiate fair compensation for their programming.

As a natural consequence, broadcasters would be disadvantaged when bidding for new programming, and top programming will migrate away from broadcast stations – where it would be available for free to anyone with an antenna – to expensive cable networks that will charge far more in affiliate fees than broadcasters would seek. This does not serve the public interest and it is contrary to the will of Congress. Accordingly, the Local Broadcasters urge the Commission to reject Mediacom's Petition and the many other similar calls from its MVPD allies that would alter the retransmission consent rules.

Respectfully submitted,

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